Supreme Court, U.S.
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No. 97-1808

In The

Supreme Court of the United States

October Term, 1997

MICHAEL BELLESFIELD,

Petitioner,

v.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals, Third Circuit

BRIEF ON BEHALF OF MORRIS HILLS REGIONAL BOARD OF EDUCATION, CHRIS BRADLEY AND ROBERT STORM IN OPPOSITION

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QUESTION PRESENTED

Did the federal courts below properly apply the *Younger* Abstention Doctrine where:

a. There is an ongoing state proceeding involving the same set of operative facts as here;

b. That state proceeding focuses on child welfare, traditionally an area of state concern; and

c. Petitioner had the opportunity to raise any constitutional issues in that state proceeding, yet chose not to do so?

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BRIEF ON BEHALF OF MORRIS HILLS REGIONAL BOARD OF EDUCATION, MR. BRADLEY AND MR. STORM IN OPPOSITION

Respondents, Morris Hills Regional Board of Education, Chris Bradley and Robert Storm, respectfully request that this Court deny the Petition for a Writ of Certiorari filed by petitioner, Michael Bellesfield, seeking review of a decision by the United States Court of Appeals, Third Circuit, entered February 6, 1998.

COUNTERSTATEMENT OF THE CASE

I. Background

Eric Bellesfield is the minor son of Petitioner Michael Bellesfield. The genesis of this federal court action emanates from numerous investigations by the New Jersey Division of Youth and Family Services ("DYFS") into allegations that Michael Bellesfield had abused Eric Bellesfield.

In February 1987, DYFS investigated reports that Michael Bellesfield left Eric Bellesfield (then a young boy) unsupervised.[1] Michael Bellesfield thereafter obtained a babysitter and DYFS intervention ceased. (App. 13).

In March 1992, Eric Bellesfield ran away from home and reported that Michael Bellesfield had hit him several

[1] Respondent will cite to the materials contained within its appendix as (App. ___).

times.[2] (A40). DYFS did not seek protective custody of Eric Bellesfield at that time but, instead, recommended that Michael Bellesfield and Eric Bellesfield seek therapy. (A40).

On April 10, 1992, Eric Bellesfield again reported being hit by Michael Bellesfield. (A40). DYFS, however, again did not seek protective custody of Eric Bellesfield. (A40).

In May 1992, Michael Bellesfield voluntarily entered a hospital for psychiatric treatment. (A40). A month later, a psychiatrist examined Eric Bellesfield and concluded that he needed both " 'active sponsorship and an endorsement in a therapeutic relationship.' " (A40).

On August 16, 1993, Eric Bellesfield reported to the Massachusetts Department of Social Services that he was again hit by Michael Bellesfield. (A40). Michael Bellesfield refused to undergo therapy and would not accept a counseling referral for his son. (A40).

On January 8, 1994, Eric Bellesfield reported to DYFS that Michael Bellesfield had dragged him from a convenience store and struck him across the chest. (A40). At that time, Michael Bellesfield signed a voluntary placement agreement, placing Eric Bellesfield in DYFS custody. (A40-41).

On January 14, 1994, DYFS initiated an action in the Superior Court of New Jersey, Chancery Division, seeking an Order placing Eric Bellesfield in its protective

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[2] Respondent will cite to the materials contained within Michael Bellesfield's appendix as (A ___).

custody. (A39). Among other things, DYFS maintained that Michael Bellesfield had abused Eric Bellesfield. See *N.J.S.A.* 9:6-8.21(c); (A40).

Following the commencement of that action, DYFS took Eric Bellesfield into protective custody. (A41). Thereafter, contact between Michael Bellesfield and Eric Bellesfield was limited to supervised church and counseling visits arranged through DYFS. (A41). Michael Bellesfield was ordered to obtain psychological evaluations, provide past psychological information, and provide information about other family members. (A41).

In July 1994, Michael Bellesfield sought an immediate change of custody, claiming that the foster parents who had been caring for Eric Bellesfield had physically disciplined him. (A41). Michael Bellesfield sued the foster family and thereafter improperly attempted to communicate with them. (A41).

Michael Bellesfield's subsequent actions led to restrictions on church and counseling visitation. (A41). On one occasion, Michael Bellesfield handed a note to Eric Bellesfield during a church service. (A41). That note requested that Eric Bellesfield copy a letter prepared by Michael Bellesfield which stated, in effect, that his foster parents had hit him and that he wanted to go home to Michael Bellesfield. (A41-42).

A trial of the custody issue took place on July 18, 1995 and July 19, 1995 in New Jersey Superior Court. (A39). The Court interviewed Eric Bellesfield on August 4, 1995 and determined that he had been abused by Michael Bellesfield. (A45). The Court further concluded

that Michael Bellesfield posed a high risk to abuse Eric Bellesfield. (A45).

Since the issuance of the August 22, 1995 decision, the Court entered several additional orders requiring that Eric Bellesfield remain in DYFS protective custody and directing Michael Bellesfield to enter into therapy.

The Superior Court action remains pending.

II. Proceedings Below

Michael Bellesfield filed his initial complaint in the United States District, District of New Jersey on March 11, 1997. The Complaint purported to be a combination habeas corpus petition, see 28 U.S.C. § 2255, and a civil rights complaint. See 42 U.S.C. § 1983.

On March 18, 1997, the District Court entered an order noting several deficiencies in the Complaint. Specifically, the Complaint did not comply with Fed. R. Civ. P. 8(a), did not state a cause of action for habeas corpus relief and sought to interrupt ongoing State Judicial proceedings. (App. 1-4). The Court gave Michael Bellesfield leave to file an amended pleading that corrected the noted deficiencies. (App. 4).

Also on March 18, 1997, Michael Bellesfield filed an emergent order to show cause seeking a Federal Court injunction to prevent a summary hearing scheduled to be held in the Superior Court regarding the parental rights of Michael Bellesfield. On March 26, 1997, the Court denied the relief sought in the Michael Bellesfield order to show cause, because Michael Bellesfield had not yet complied with the March 18, 1997 order, and because the

"summary hearing" that Michael Bellesfield sought to enjoin could be adjourned at the request of Michael Bellesfield. (App. 5-6).

On March 26, 1997, Michael Bellesfield filed an amended complaint seeking immediate release of Eric Bellesfield from foster care, damages in the amount of $3 million, and a temporary injunction preventing New Jersey from continuing the lower court action. (App. 7-39). Michael Bellesfield sought injunctive relief via motion filed on April 23, 1997.

On April 23, 1997, Judge Lechner issued an order to show cause why the Federal District Court should not abstain from exercising jurisdiction over the matter. (A35-38). The order to show cause also denied the relief sought in Michael Bellesfield's motion, because he had failed to provide proof that the motion had been served upon defendants and because it was filed prior to the service of the amended complaint. (A36-37).

On June 26, 1997, Judge Lechner issued a letter opinion and order concluding that the court would abstain from exercising jurisdiction over the case. (A18). The court premised that conclusion on its application of the Abstention Doctrine developed in *Younger v. Harris*, 401 U.S. 37, 1971 and its progeny. (A18).

The Doctrine of Abstention prevents federal courts from interfering with pending state court proceedings and is applied in a particular case only after analyzing a three-part test. (A26). The district court here reviewed each part of the test and concluded that abstention was proper. (A27-31).

The first criteria addresses whether there is an ongoing proceeding in the state court system involving the same issues and parties as in federal court. (A27). In this case, the federal court action concerned the identical operative facts as in state court, *i.e.*, the custody of Eric Bellesfield and the parental rights of Michael Bellesfield. (A27).

The district court further concluded that the second prong, *i.e.*, whether the state proceeding implicates important state interests, had been met, as well. Citing the history of decisions supporting the notion that family/child welfare is traditionally a strong state interest, coupled with the need to maintain the integrity of the state court system, the district court found that the second factor had been satisfied here. (A28-30).

The third and final criteria focuses on whether the plaintiff had an opportunity to litigate any constitutional claims in state court. The district court held that plaintiff could have raised various constitutional challenges in state court, but failed to do so. (A30-31).

Finally, the district court concluded that Michael Bellesfield had failed to establish "bad faith" by the various state agencies in the handling of his son's custody case, or that extraordinary circumstances existed to bring the federal action outside the scope of *Younger*. Specifically, the court held that Michael Bellesfield had provided "only conclusory allegations and vague references to a conspiracy involving the Attorney General, DYFS, various schools and the Public Defender." (A32).

Michael Bellesfield thereafter appealed that ruling to the United States Court of Appeals, Third Circuit. On

February 6, 1998, Circuit Judge Ruggiero J. Aldiscert issued a memorandum opinion affirming the judgment of the District Court. (A4-7). The Circuit Court agreed with the District Court's analysis of the *Younger* Abstention Doctrine and was "satisfied with the lower court's reasoning." (A6).

SUMMARY OF ARGUMENT

The District Court and the Circuit Court of Appeals properly analyzed the *Younger* Abstention Doctrine, as well as the three-part test set forth in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 459 U.S. 423 (1982). Plaintiff admits that there is an ongoing proceeding in state court involving the same parties and issues. New Jersey's interest in family matters is sufficiently strong to require abstention. Finally, Michael Bellesfield had a forum (the pending New Jersey state court action) to seek redress for his constitutional and alleged other grievances, yet chose not to utilize that forum.

Michael Bellesfield overlooks the clear applicability of the Doctrine of Abstention and provides no facts or case law in support of any exception to that doctrine. Petitioner's call for modification of *Younger*, based on the facts on this case, should not be heard. The claims of state-sponsored kidnapping, official misconduct, and unlawful detention are premised only on petitioner's vague, conclusory and unsupported statements not borne by the record in this matter. To the contrary, petitioner has a forum in state court, chose to ignore visitation rules, and ultimately was found to have abused his son.

Despite those findings, and even though he did not raise any constitutional challenges in state court, Michael Bellesfield now asks this Court to intervene in his pending state court action to "perhaps prevent an all out rebellion on the part of millions of parents." Such a bald claim to overturn a fundamental maxim of federal jurisprudence should not be granted further review. Because the decisions of the District Court and Court of Appeals are well-reasoned and soundly based, the petition for certiorari should be denied.

ARGUMENT

THE COURTS BELOW CORRECTLY CONCLUDED THAT THE FEDERAL COURTS SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER THIS MATTER

1. The *Younger* Doctrine of Abstention

The original and amended complaints filed by Michael Bellesfield contain allegations that various constitutional and civil rights have been violated. Plaintiff, therefore, appears to premise jurisdiction for this matter based on 28 U.S.C. § 1331. The sole question raised by this appeal, then, concerns whether the courts below properly determined that the federal judiciary should decline exercising jurisdiction over this case based on the *Younger* Abstention Doctrine.

In *Younger v. Harris*, 401 U.S. 37 (1971), Harris was indicted on various criminal offenses in California state

court. Harris thereafter filed a complaint in federal district court, seeking to enjoin Younger (the California District Attorney) from prosecuting him. Specifically, Harris alleged that the prosecution inhibited the exercise of his rights under the First and Fourteenth Amendments.

The Supreme Court recognized that Harris' request for an injunction, if granted, would undermine long-standing principles of comity and federalism:

> *[Congress has historically] manifested a desire to permit state courts to try state cases free from interference by federal courts.*
>
> * * *
>
> The normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions.
>
> [*Id.* at 43, 45 (emphasis added).]

As a result, the Court's ruling became known as the *Younger* Abstention Doctrine ("the Doctrine"), which prevents federal courts from interfering with pending state court proceedings, even when there is an allegation of a constitutional violation. *Id.* at 43-44. The Doctrine now also applies to pending state court civil actions, which raise important state interests and where the claimant has a forum to raise the claims for which redress is sought in the federal system. *See, e.g., New Orleans Pub. Serv. Inc. v. Council of New Orleans*, 491 U.S. 350 (1989); *Juidice v. Vail*, 430 U.S. 327, 334 (1977); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604, *reh'g denied*, 421 U.S. 921 (1975); *see also Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 10-14 (1987); *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S.

619, 627-29 (1986); *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431-32 (1982); *Moore v. Sims*, 442 U.S. 415, 423 (1979); *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 843 (3d Cir. 1996); *Marks v. Stinson*, 19 F.3d 873, 883 (3d Cir. 1993).

Federal courts developed the Doctrine of Abstention out of deference to principles of comity and federalism. *Quackenbush v. Allstate Insurance Co.*, 116 S. Ct. 1712, 1724 (1996) (citing *Younger, supra*, 401 U.S. at 44-45). As this Court observed in *New Orleans Public Service:*

> For *Younger* purposes, the State's trials and appeals process is treated as a unitary system, and for a [F]ederal court to disrupt its integrity by intervening in mid-process would demonstrate a lack of respect for the State as sovereign.
>
> [491 U.S. at 369].

The Supreme Court in *New Orleans* established a three-part test in order to apply the Doctrine on a case-by-case basis. First, there must be a pending state proceeding that is judicial in nature. *Id.* at 352. Next, the state proceedings must raise issues of important interest. Finally, plaintiff must be afforded an opportunity to raise any constitutional issues in the state forum. *Ibid.* A review of each factor in this case makes clear that the District Court decision was proper and should be affirmed.

A. Pending State Proceeding

As to the first part of the test, even plaintiff admits that his Complaint seeks the intervention of the Federal Court during the course of a state proceeding, contrary to

doctrines of federalism and abstention. The pending state action involves the custody of Eric Bellesfield, the same set of operative facts as here. The courts below properly reached that very conclusion. Clearly, then, the first requirement for abstention under *Younger* has been satisfied.

B. Important State Interests

The second criteria of *Younger* has been met, as well. This prong requires abstention if the state proceedings implicate important state interests. The important state issue still being litigated in state court of *Younger* here focuses on child/family welfare. Questions of family relations (specifically, custody) have historically been an area of state, not federal, concern. *See, e.g., Moore v. Sims*, 442 U.S. 415, 435 (1979); *Morrow v. Winslow*, 94 F.3d 1386 (Ct. App. Okl. 1996) (recognizing unique federal interest in welfare of Indian children, but concluding that tradition of state interest in family relationship was sufficiently strong to apply the Doctrine).

The Court in *Morrow* also recognized another important state interest at issue here that goes hand-in-hand with that of family relations. The state has an interest in ensuring that all family/child welfare matters proceed in an orderly fashion so as to protect the interests of the child. *Ibid.* Allowing plaintiffs such as Michael Bellesfield an opportunity to re-litigate issues of child custody implicate important principles of comity and federalism. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13 (1987). In addition, intervention by the federal courts here would

potentially preempt years of fact-finding regarding the appropriate care for Eric Bellesfield.

Accordingly, the state's interest in adjudicating issues of child welfare, coupled with long-standing maxims of comity and federalism, result in the inescapable conclusion that the second prong in *Younger* has been met here.

C. Opportunity to Raise Issues in State Court

Finally, the Doctrine of Abstention can be applied so long as plaintiff has an adequate opportunity to raise constitutional issues in state court. *Port Authority PBA v. Port Authority of New York and New Jersey*, 973 F.2d 169, 173 (3d Cir. 1992). Although plaintiff may have been dissatisfied with the decisions reached thus far by the trial courts in the New Jersey state action, plaintiff in fact, had the opportunity to raise any constitutional issues in that forum or via appeal. His failure to do so should not afford him a second opportunity in a different forum.

Bellesfield also claims the presence of bad faith or extraordinary circumstances warrants reversal of the opinions below. The Court in *Younger* recognized that abstention is inappropriate if:

> A) the state court proceedings are pursued in bad faith to harass the federal claimant; or
>
> B) extraordinary circumstances exist, such as where a challenged statute flagrantly violates express constitutional prohibitions, and where abstention would cause irreparable injury.
>
> [*Port Authority, supra*, 973 F.2d at 176]

Petitioner here asserts *claims* of bad faith, as well as *allegations* that extraordinary circumstances exist here. Those claims, focusing on purported harassment of the Bellesfield family by DYFS and other state agencies, are supported by nothing more than conclusory, bald allegations. The courts below properly recognized that exceptions to *Younger* are rare, and that more than mere conclusory allegations is necessary. (A31). Thus, Michael Bellesfield's "proofs" in the regard are patently deficient, and petitioner has failed to establish the existence of either bad faith or extraordinary circumstances.

Accordingly, the Doctrine of Abstention should apply here.

CONCLUSION

The Courts below properly applied the *Younger* Abstention Doctrine to this case. Petitioner concedes that state proceedings are ongoing, that custody is an important state issue, and that he failed to contest constitutional issues in state court. Moreover, petitioner cannot establish, beyond merely making conclusory allegations, that bad faith or exceptional circumstances exist here. Accordingly, there is no need for intervention by the federal courts in this matter and, therefore, respondents Morris Hills Regional School District, Robert Storm and

Chris Bradley respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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Dated: June 5, 1998

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL BELLESFIELD, ERIC BELLESFIELD, a minor, Plaintiffs, v. ATTORNEY GENERAL, STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only, PETER ALVINO, individually and in official capacity, NEW JERSEY DEPT. OF HUMAN SERVICES WILLIAM WALDMAN, DIRECTOR, in official capacity only, DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities, FAMILY ENRICHMENT PROGRAM, MORRISTOWN FORENSIC ASSOCIATES MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities, MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity, RUDOLF TWNSP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN AND ERIC HERSCHMAN, individually and in official capacities, MORRIS HILLS SCHOOL SYSTEM, MR. BRADLEY, MR. STORM, individually and in official capacities, CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity, Defendants.	CIVIL ACTION NO. 97-1181 (AJL) ORDER (Entered 3-18-97)

This matter having come before the court upon the complaint (the "Complaint") of *pro se* plaintiffs Michael Bellesfield and Eric Bellesfield, a minor (collectively, the "Plaintiffs"), and it appearing

- Plaintiffs' purported *habeas corpus* petition fails to state a cause of action because Eric Bellesfield is in foster care, Complaint at 9, and is, therefore, not a prisoner nor does he suffer any restrictions imposed by State criminal justice system. *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502, 511 (1982). Accordingly, it appears appropriate to dismiss the Complaint to the extent it seeks *habeas corpus* relief.

- The Complaint seeks to disrupt ongoing State judicial proceedings. *See* Complaint at 37. It appears that to grant the relief sought in the Complaint would disrupt the integrity of the State judicial proceedings and "would demonstrate a lack of respect for the State as a sovereign." *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 369 (1989); *see Younger v. Harris*, 401 U.S. 37 (1971). Accordingly, it appears appropriate to dismiss the Complaint, as it is now drafted.

- Federal Rule of Civil Procedure 8(a) ("Rule 8(a)") requires that a pleading "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a). The purpose of Rule 8(a) is to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *see also In re Westinghouse Securities Litigation*, 90 F.3d 696, 702 (3d Cir. 1996); *Barnhart v. Compugraphic Corp.*, 936 F.2d 131, 135 & n.7 (3d Cir. 1991); *Salahuddin v. Cuomo*,

861 F.2d 40, 42 (2nd Cir. 1988) (explaining purpose of rule is to "give the adverse party fair notice of the claim asserted so as to enable him [or her] to answer and prepare for trial"); *Mayor and Council of Borough of Rockaway v. Klockner & Klockner,* 811 F.Supp. 1039, 1061 (D.N.J. 1993). Courts have discretion to dismiss a complaint, *sua sponte,* where "the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Salahuddin,* 861 F.2d at 42 (holding court has power, on its own initiative, to dismiss the complaint when it does not comply with requirements of Rule 8); *see also Frazier v. Southeastern Pennsylvania Transp. Auth.,* 785 F.2d 65, 68 (3d Cir. 1986); *Bryson v. Brand Insulations, Inc.,* 621 F.2d 556, 559 (3d Cir. 1980) (a court may dismiss a complaint on its own initiative if the complaint affords a sufficient basis for the court's action); *Wheeler v. Nieves,* 762 F.Supp. 617, 627 (D.N.J. 1991); *Panek v. Bogucz,* 718 F.Supp. 1228, 1229 (D.N.J. 1989); *King v. Fayette County,* 92 F.R.D. 457, 458 (W.D.Pa. 1981); *Brown v. Califano,* 75 F.R.D. 497, 499 (D.D.C. 1977). Where a complaint does not comply with Rule 8(a), however, a plaintiff is generally given leave to file an amended pleading that conforms to the requirements of Rule 8. *Salahuddin,* 861 F.2d at 42.

• In the instant matter, the Complaint consists of thirty-nine pages of factual and legal argument. The Plaintiffs have additionally submitted twenty-three exhibits in support of the Complaint. The paragraphs of the Complaint are not numbered. The Complaint further purports to be a combination of a *habeas corpus* petition and a civil rights complaint. *See* Complaint at 2. Plaintiffs allege violations of the "First, Fourth, Fifth, Sixth, Seventh, Ninth, Thirteenth, Fourteenth and Fifteenth Amendments" and allege numerous causes of action including conspiracy to violate civil rights, denial of due process, abuse of power, abuse of

process, "[t]reatment [m]al-practice" (sic), "[u]ltra [v]ires [s]ubstantiation [d]efamation," libel/slander and alienation of affection. Complaint at 1-2. Plaintiffs' claims are alleged in a disjointed and vague manner and the Complaint is unnecessarily confusing. The Complaint, therefore, fails to provide fair notice to Defendants of the claims asserted by Plaintiffs.

and for good cause shown,

IT IS, on this 17th day of March, 1997,

ORDERED, that the Complaint will be dismissed pursuant to Rule 8(a) unless an amended complaint is filed as permitted by this order, and it is further

ORDERED, that Plaintiffs are granted leave to file, within fifteen (15) days of the date of this order, an amended pleading which conforms with the requirements of Rule 8(a) and addresses the other issues raised in this Order, and it is further

ORDERED, that should Plaintiffs fail to respond to this Order, as directed, the Complaint will be dismissed for the reasons stated, and it is further

ORDERED, oral argument will not be heard; the decision will be based upon any written submissions received, as permitted herein.

/s/ Alfred J. Lechner, Jr.
ALFRED J. LECHNER, JR., U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL BELLESFIELD, ERIC BELLESFIELD, a minor, Plaintiffs, v. ATTORNEY GENERAL, STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only, PETER ALVINO, individually and in official capacity, NEW JERSEY DEPT. OF HUMAN SERVICES WILLIAM WALDMAN, DIRECTOR, in official capacity only, DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities, FAMILY ENRICHMENT PROGRAM, MORRISTOWN FORENSIC ASSOCIATES MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities, MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity, RUDOLF TWNSP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN AND ERIC HERSCHMAN, individually and in official capacities, MORRIS HILLS SCHOOL SYSTEM, MR. BRADLEY, MR. STORM, individually and in official capacities, CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity, Defendants.	CIVIL ACTION NO. 97-1181 (AJL) ORDER (Entered 3-26-97)

This matter having come before the court upon the "Emergent Order to Show Cause" (the "Order to Show Cause"), filed 26 March 1997, and it appearing a complaint (the "Complaint") was filed in the instant action, on 11 March 1997, by *pro se* plaintiffs Michael Bellesfield and Eric Bellesfield, a minor (collectively, the "Plaintiffs"), and an order having been filed in the instant action on 18 March 1997 (the "18 March 1997 Order"), and the 18 March 1997 Order having set forth the various deficiencies of the Complaint and having given Plaintiffs the opportunity to file an amended complaint which addresses the deficiencies, and it appearing Plaintiffs have not yet filed an amended complaint, and it further appearing Plaintiffs assert the Order to Show Cause must be addressed on an emergent basis because a summary hearing before Hon. Stephen F. Smith, Jr., J.S.C., to address plaintiff Michael Bellesfield's parental rights, has been scheduled for 1 April 1997, and it appearing Plaintiffs may request an adjournment and "a new date can be set in [c]ourt on April 1, 1997," Certification of Michael Bellesfield in Support of Emergent Order to Show Cause, dated 17 March 1997, Exh. E, and it appearing, therefore, the Order to Show Cause need not be considered on an emergent basis, and for the reasons set forth in the 18 March 1997 Order, and for good cause shown,

IT IS, on this 26th day of March, 1997,

ORDERED, that the relief sought by the Order to Show Cause is denied.

/s/ Alfred J. Lechner, Jr.
ALFRED J. LECHNER, JR., U.S.D.J.

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609-716-0616

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Michael Bellesfield Eric Bellesfield a minor Plaintiffs, vs. Attorney General, State of New Jersey, Peer Verniero in official capacity only, Peter Alvino, individual and official capacity. New Jersey Dept. of Human Services William Waldman, Director, in Official capacity only. Division of Youth and Family Services, James Valentine, David Johnston, individually and in official capacities. Family Enrichment Program, Morristown Forensic Associates Michael Shea, Michael Fiore individually and in official capacities. Morris County Public Defender's Office, Joel Harris individually and in official capacity.	CASE #97-1181 (AJL, Jr.) AMENDED CIVIL COMPLAINT CONSPIRACY TO VIOLATE CIVIL RIGHTS Denial of Due Process Abuse of Power Abuse of Process Treatment Mal-practice Ultra Vires Substantiation Defamation, Libel/ Slander Alienation of affection Invasion of Privacy Intentional Infliction of Emotional Distress JURY DEMAND

Randolph Twnsp. School System, Carmine Gaito, Norma Miele, Susan and Eric Herschman individually and in official capacities.

Morris Hills School System, Mr. Bradley, Mr. Storm, individually, and in official capacities.

Child Placement Review Board, Suzanne Warren, individually and in official capacity.

Defendants.

Michael Bellesfield, and on behalf of his minor son Eric Bellesfield, residents of of [sic] the State of New Jersey by way of Complaint, say;

JURISDICTION

1. This is a civil rights action for damages, declaratory judgement and injunctive relief to redress the deprivation under color of law, of rights served by the First, Fourth, Fifth, Sixth, Seventh, Ninth, Thirteenth, Fourteenth and Fifteen Amendments to the United States Constitution, and in violation of Title 42 USC Sections 1983 and 12131 et. seq. These are actions taken, under color of State Law, by State Agencies and are also violative of the Constitution of the State of New Jersey and of its statutory provisions and rules. This Court has jurisdiction pursuant to 42 USC Section 1983. Plaintiffs have been deprived of Constitutional Rights in violation of both substantive and

procedural due process safeguards, accorded all Constitutionally protected rights. Venue is pursuant to 28 USC Section 1391, as this is the district wherein plaintiffs reside and the claim arose. The amount in controversy, excluding interest and costs, exceeds $100,000.00.

2. Although this Complaint does seek the intervention of the Federal Court during the course of a state proceeding, contrary to doctrines of federalism and abstention, it is submitted that Federal intervention is not only justified, but absolutely necessary in order to prevent a blatant and purposeful violation of fundamental Constitutional rights and protections with particularly grave consequences which will result in the erroneous termination of parental rights and irreparable damage to this family. Additionally the actions of the State have been taken in bad faith, with a history of extraordinary circumstances and harassment so as to require the Federal Court to intervene to vindicate Constitutional violations in State Court, when by reason of passion or prejudice a full and fair hearing cannot be had in the State Court and the imminent and irrevocable damage which will befall this family if the Court does not do so. Under these extraordinary circumstances plaintiffs should have their opportunity to be heard in a Federal Forum.

PARTIES

3. a. Plaintiffs Michael Bellesfield and his natural son, Eric, are residents of the State of New Jersey, whose Constitutional rights have been and continue to be violated by the State of New Jersey and the sanctity of their

family, without due cause and in bad faith. They have been denied due process and equal protection both substantive and procedural.

b. Defendant Peter Verniero, Attorney General for the Department of Law and Public Safety for the State of New Jersey, the body politic in whose name all actions have been taken, and was at all times relevant in official capacity.

c. Defendant William Waldman is the Director of the New Jersey Department of Human Services and is responsible for the supervision of the Division of Youth and Family Services and was at all times relevant in official capacity.

d. Defendants James Valentine and David Johnston are employees of the Division of Youth and Family Services, (hereinafter DYFS) and were at all times relevant individually and in official capacities.

e. Defendants Michael Fiore and Michael Shea are employees of the DYFS contracted agencies, the Family Enrichment Center and Morristown Forensic Associate and were at all times relevant individually and in official capacities.

f. Defendant Joel Harris is an employee of the New Jersey Public Defenders Office of Morris County and was all times relevant individually and in official capacity.

g. Defendants Carmine Gaito, Norma Neile, Susan and Eric Hershman are employees of the Randolph Township New Jersey School System were at all times relevant individually and in their official capacities.

h. Defendants Bradley and Storm are employees of the Morris Knolls New Jersey School System and were at all times relevant individually and in their official capacities.

i. Defendant Suzanne Warren is an employee of the Child Placement Review Board which is also within the Department of Human Services and was at all relevant individually and in official capacity.

WRONGFUL CONDUCT

4. Upon information and belief, the defendants named herein, have willfully engaged in a conspiracy consisting of a pattern of escalating intrusion into the life of this family, until they have finally succeeded in effectively terminating the father's right of access to his son. These actions were taken under color of State Law and accomplished through abuse of their discretionary power and process and by either violating applicable State Law, or in the alternative, using State Law which is unconstitutionally vague so as to permit them to destroy the sanctity of this and other families, by violating the most fundamental of liberty and property rights.

5. Generically, it is submitted that this conduct on the part of DYFS and its affiliate and contracted agencies named herein, has been a systemic pattern for at least a decade using heavy handed "Gestapo" like tactics, DYFS has followed the same custom and practice for over a decade and the same scenario of insidious and progressive escalation of a charge of abuse, which is perpetuated by the agency itself. This custom and practice is a bureaucratic process through which DYFS, with the aid of their

contracted agencies, begins with intervention by means of a "Voluntary Placement Agreement," or other minimal intervention, and then engage in a step by step escalation of their intervention, using their experts to validate their requests for same, which then progresses to more and more intrusive intervention leading toward the end of permanent State custody and/or termination of parental rights.

6. This is accomplished through a series of complex actions and then using each preceding episode to justify each successive one which eventually is carried by its own momentum which is more fully explained infra. This same scenario occurs with hundreds of families in the State of New Jersey each year, wherein DYFS engages in willful and pre-meditated violations of Constitutional safeguards and parental rights, to illegally take children from their natural parents without due cause, usually to justify their own existence and funding and/or targeting those parents who do not immediately succumb to their authority and that in doing so, DYFS is violating their own mission statement which includes due regard for the rights of parents and a commitment to keeping natural families intact whenever possible.

7. Such actions are taken under the guise of compelling state interests, but are really unwarranted intrusions and taken in wanton and reckless disregard for the welfare of those people whom they are supposed to be protecting, or in the alternative, with such gross negligence and incompetence as to defy comprehension. These acts consist of abuse of power, discretion and process. Many of the tactics involve threats and intimidation and are so

egregious that they even reach into the private professional community, so that many doctors, psychologists and even lawyers will refuse to become involved in any case which opposes DYFS. This is an agency fraught with systemic corruption, drunk with power and out of control.

8. In this case, the State has wrongfully taken a child from the only parent he has ever known. These actions were taken in bad faith and part of a long term campaign of harassment against this family. A father is without his son and the son without his father, because of the discretionary acts of mid level State officials, who have wrongfully deprived them of the most precious of liberty rights, under color of state law by abusing the discretionary powers given them to protect these very persons, in a most egregious manner, repugnant to the very ideals of the Constitution they supposedly serve.

CAUSE OF ACTION

9. This case dates back to early 1987, when DYFS made the first intervention with the family. On February 2, 1987, when it first came to DYFS attention that petitioner was a single parent and was leaving his son Eric alone in the home for lack of an adequate baby-sitter. Mr. Bellesfield on his own had raised cared for and supported Eric, since he was an infant. At that time, DYFS did their first investigation and following the petitioner's procuring a baby-sitter, found the problem had been corrected and saw no need for any further intervention.

10. On March 8, 1992, there was an allegation of physical abuse, which was investigated by DYFS and found

again to be unsubstantiated. On April 10 that same year there was another DYFS investigation of physical abuse, which again was found to be unsubstantiated. On August 16, 1993 another report was made and the results of the DYFS investigation were the same. On January 8, 1994 another allegation was made and investigated. Apparently, virtually all these events were sparked by statements made by Eric Bellesfield, but no physical abuse was ever substantiated in any of them.

11. On that same date, however, because Eric did not want to go home, Michael Bellesfield ultimately signed a "voluntary placement agreement." In January, Mr. Bellesfield revoked that agreement. As a result, DYFS filed a petition for protective custody on January 14, 1994. Although several review hearings were held in 1994 and 1995, resulting in several Orders extending protective custody, and Eric was placed in foster care, a fact finding hearing was not held until July 18, 1995.

12. During two days of testimony before the Honorable Catherine Langlois, testimony was taken from a variety of DYFS workers and their experts. It was alleged by DYFS that Mr. Bellesfield violated NJSA 9:6-8, which defines an abused or neglected child and the court entered a finding that Eric Bellesfield fit the description of an abused or neglected child under the aforementioned statute. This finding was based not on any real incidents of abuse, but by the "risk assessment," done by Drs. Shea and Fiore as well as the DYFS workers. These "predictions" are at best, educated guesses, which are not an acceptable standard of treatment for any practicing professional, especially the doctors and certainly not a basis

for taking a child from a parent with no evidence of any substantiated abuse.

13. This testimony, however, resulted in an Order that Eric remain in DYFS custody indefinitely. At this point it is assumed that the minor is being held by the State against his own and his father's will. DYFS will not reveal the minor child's whereabouts to his father and will not confirm that the parents wishes with respect to Eric's religious upbringing are being adhered to and will not permit Mr. Bellesfield access to his child, except in a DYFS supervised setting. These defendants, under color of State law, conspired in bad faith to achieve these ends in violation of the most precious and sanctified of rights, privileges and safeguards of the United States Constitution.

COUNT ONE

Conspiracy to violate civil rights, malicious prosecution Abuse of power and process, Intentional infliction of emotional distress, Alienation of affection.

14. In the instant case, there was never any substantiation of abuse in any of the multitude of the DYFS interventions referenced, supra. Although at the time this Complaint was initially being drafted, there had not, as yet, been any formal petition to terminate parental rights filed. It is submitted that DYFS and the other defendants named herein, had already, for all practical purposes, conspired to do exactly that, through use of the tactics described. They have effectively already accomplished same, in that Michael Bellesfield has no say whatever in

any decisions regarding the care and custody of his natural son whom he raised as a single parent, since the child was an infant.

15. Indeed he does not know where his son is going to school or how he is doing academically. Mr. Bellesfield has no idea whether the child is attending the church of his choice, and has no input as to his religious upbringing, a clearly defined area, in which the State has no right to interfere. Indeed, at this very moment, he does not even know where his son is. This is effectively the termination of parental rights, no matter what it is called.

16. Further DYFS and the defendants named herein are following the long established custom and practice, using fraudulent means and abuse of power and process, to follow a classical and typical scenario of increasingly escalating intrusion into the family, from the initial wrongful usage of the so called "voluntarily" placement form, through several other legal stages, infra, toward the end of formally terminating of parental rights. This is especially true with respect to the misuse of the "voluntary" Placement Agreement is, by itself, sufficient to establish a prima facie case.

17. Upon information and belief it is submitted that both the general customs and practices of this agency and its affiliates and the end toward which they strive, is clearly the termination of parental rights and as discussed herein, infra, and that the instant case is a perfect illustration of tragic consequences of such a scenario and through official documentation will show that these

practices are systemic and violative of state law, or alternatively the statutes which govern these agencies are unconstitutionally vague and/or overbroad.

18. In each of the incidents described supra, there was never once a finding or substantiation of abuse or neglect, a fact which is not contested by the defendants. This is reflected in the State's records. In fact, in each of the instances of DYFS intervention, the workers themselves stated there was no indication of physical abuse, injuries, black and blue marks etc., as reflected in their own records. There was never once a substantiation of any abuse by these agencies. Yet they were able to take the minor child away from his natural parent and lawful guardian for almost two years without such charges ever substantiated, with arrogant disregard for the rights of this family.

19. In the January 8, 1994 incident, which triggered the current proceedings, the worker Defendant Valentine wrote in his Referral Response Report, "There is no injury . . . no imminent danger to Eric and no need for intervention," Then, because Eric said he did not want to go home, he urged Mr. Bellesfield to sign a "Voluntary Placement Agreement," through use of deceptive statements and heavy handed threats, intimidation and harassment.

20. Mr. Bellesfield was given the usual ultimatum by the worker, which causes the abuse of that agreement; that he could either sign the "voluntary" agreement and maintain custodial control over his son, or DYFS would get a Court Order to take him anyway. They were aided in this cause, since Eric as a normal rebellious teenager, who had

learned he could manipulate his father through statements to DYFS, as was reported to DYFS by his therapist Catherine Pollack and is also reflected in the DYFS records as well, wherein they state that such manipulation was taking place. Many teens have now learned this and have taken to doing so when they are angry or upset.

21. Clearly, however, when the long standing DYFS record has NEVER once substantiated any abuse, there is no good faith basis for any further State intrusion. It is obvious from the facts, that DYFS used their approach of escalating intervention to then finally employ the "if there is smoke there is fire" method of developing purely circumstantial evidence, which barely met the minimal threshold to petition the Court for "temporary placement," and only then with the aid of evaluations and reports from their contracted agents, including the Child Placement Review Board, Morristown Forensic Associates and the Family Enrichment Program. In order to accomplish this, all of these agencies crossed the line between cooperating with each other to conspiring with one another because Mr. Bellesfield tried to assert his most fundamental Constitutional rights, would not succumb to their authority and let them take his son for no good reason.

22. Upon information and belief, it was for this reason the defendants conspired with one another in order to continue the escalation process, to change the initial goal of the temporary placement which went from "voluntarily, placement" to "short term placement" to "long term placement," all within the course of two years and all of which was in opposition to the wishes of both the father and son, that Eric be allowed to go home. Few

cases could be more illustrative of the abuse of power and process in the use of this custom and practice of bureaucratic escalation.

23. The evidence of this progressive tangled web weaved by the defendants, with no just cause and despite the fact that, by their own admission, there was never any indication of abuse, is overwhelming, according to their own records. In fact, the only documented abuse which took place was while Eric was in foster care and was slapped across the face by the foster mother. But never once did any agency document abuse on the part of the natural father, nor was there any judicial determination of same. There was no basis for the continuing intrusion into this family, other than the bad faith and outrageous actions of the defendants.

24. The deprivations here, which occurred under color of state law are egregious in the extreme. These actions were willful, wanton and committed with reckless disregard or are, in the alternative, grossly negligent and/or incompetent. As a direct and proximate result of these actions the plaintiffs have been wrongfully deprived of their most fundamental rights, have had the sanctity of their family violated without cause. Both have experienced extreme emotional and psychological distress and have been damaged thereby.

25. There are aggravating circumstances here, of a most egregious nature, in that these are Sstate [sic] officials abusing their positions and power and acted knowingly and willfully to violate the most sanctified Constitutional rights of the plaintiffs with wanton and reckless disregard for their well being, for their own ulterior motives,

simply because Mr. Bellesfield would not succumb to their authority and because he fought for his rights as a parent.

WHEREFORE, the petitioners demand the immediate release of Eric Bellesfield from State Custody to his natural father and compensatory judgements against the defendants jointly and severally in an amount not less than $3,000,000.00 and such punitive damages as the Court deems appropriate, along with costs of this action.

Plaintiffs demand a trial by jury in this cause.

COUNT TWO

Conspiracy, Invasion of privacy, Treatment mal-practice [sic], Ultra Vires Substantiation, libel/slander, intentional infliction of emotional distress, abuse of power and process.

26. Plaintiffs reallege paragraphs 1-25 herein and incorporate same as if more fully set forth herein.

27. In addition to their own intrusions into this family, DYFS workers appeared at Eric's schools on numerous occasions, unannounced and without Mr. Bellesfield's knowledge and consent. They took Eric out of his classroom and interviewed him repeatedly, consistently pressuring him to make statements about being mis-treated [sic], which for the most part, he refused to do. They conspired with the defendants from the school systems named herein, to encourage these school officials to regularly interrogate Eric and on one occasion strip searched

the child, causing him extreme humiliation and embarrassment, as well as ostracism from his peers. Still there was no substantiation of abuse.

28. Notwithstanding, at each review hearing, the State requested extension of the continued temporary custody, until they finally built up to "more long term placement" in the hearing in June of 1995. This request was not based on any documented abuse, but was primarily based on the observation of DYFS workers and/or defendants Fiore and Shea, and the agencies for which they work, the Family Enrichment Center, and Morristown Forensic Associates, which are both contracted to do evaluations and/or psychological counseling for DYFS and are, in that sense, merely an extension of same.

29. This father and son were separated from each other for all this time, based solely on the "opinions" of the above named defendants, who without any evidence of abuse, enabled the State to take custody of the child anyway, by their "risk assessment" which is the same as forecasting the future or gazing into a crystal ball. There are no substantiated and accepted scientific or clinical techniques capable of such predictions. This would be like allowing the police to arrest someone because they, in their expertise, "thought" he was going to commit a crime at some time in the future. It is preposterous in light of the rights and safeguards provided for citizens of this country. They then added insult to injury and assert that Mr. Bellesfield was only "marginally cooperating in counseling and visitation." For him to cooperate with this charade would be like cooperating with the snake that bit him.

30. Such a scenario only buttresses the conspiracy which is perpetuated upon the unsuspecting parent who is confronted by therapists who demand that the parent admit to the alleged abuse and submit to their authority. If they do not, then they are said to be exhibiting denial, which enables DYFS and their appointed therapists to state that the parent is not cooperating. This is quite a Catch 22 for the parent who is innocent of the charges.

31. Further, the visitations at the DYFS appointed locations are put under a microscope in a very artificial, stiff and institutional atmosphere, making normal parent/child interactions difficult at best. This then enables the therapist's and DYFS worker's observations and evaluations of same to be critical of various aspects of the interaction, which are then used against the parent in Court. If the parent objects to the visitation site, or requests a different site or supervisor, then once again they [sic] "not cooperating." If the parent refuses to continue in this vicious cycle, then they are simply denied all contact with their child, which leads to termination procedures.

32. The true motives and clear indication of the effort to confirm their intentions are illustrated in their attempt to locate Mr. Bellesfield's sister, their real goal is clearly stated in the letter written by Sharon Arnold an investigator supervised by defendant Warren, as seen in exhibit I, annexed hereto, in which she states "In order for the child in question to be made available for adoption all efforts to locate existing relatives must be exhausted." It is submitted that this is nothing less than a smoking gun. Nothing more is needed to sustain the prima facie case that this was, in fact, their ultimate goal from the outset.

Obviously, before the child can be adopted the natural parents rights must be terminated. This was done prior to any finding of abuse and given the opportunity can be proven by strong documentary evidence from the defendants own records.

33. There are aggravating circumstances here. In light of the history and case law, regarding the protections accorded to parental and family rights throughout the history of this country, the defendants named herein, through use of the tactics described above have purposely and recklessly circumvented and violated state and federal law and long standing public policy and through fraudulent means, have willfully violated the petitioners rights to due process and equal protection under the fourteenth amendment to the United States Constitution. Here all of these were violated under color of State law by mid-level State officials who feel it is within their power to deny these rights, based solely on their opinion, without evidence of abuse or neglect or a judicial finding of same.

31. The deprivations here, which occurred under color of state law are egregious in the extreme. These actions were willful, wanton and committed with reckless disregard or are, in the alternative, grossly negligent and/or incompetent. As a direct and proximate result of these actions the petitioners have been wrongfully deprived of their most fundamental rights, have experienced extreme emotional, physical and financial distress, have had their good names impugned and suffered public humiliation and stigma and ostracism and have been damaged thereby.

Wherefore, the petitioners demand the immediate release of Eric Bellesfield from State Custody to his natural father and compensatory judgements against the defendants jointly and severally in an amount not less than $3,000,000.00 and such punitive damages as the Court deems appropriate, along with costs of this action.

Plaintiffs demand a trial by jury in this cause.

COUNT THREE

Conspiracy to violate civil rights, Denial of due process and equal protection, Abuse of power and discretion under color of State law, Ultra vires substantiation, Incompetence, Influence peddling, Defamation of character.

32. Plaintiffs reallege paragraphs 1-31 herein and incorporate same as if more fully set forth herein.

33. The plaintiff's now find themselves in State Court in a situation where their most fundamental rights continue to be violated and are without a remedy within the State system, as a result of the defendants abuse of power and process. In the instant case, these deprivations went on for almost two years, with no substantiated abuse, and without so much as a full hearing and/or a finding made by judicial Order. For the period of time prior to the 1995 Court Hearing before Judge Langlois, the petitioners were denied their due process rights, and their inalienable right to each other. Eric Bellesfield was wrongfully deprived of his liberty right and Michael Bellesfield was wrongfully denied his parental rights among others.

34. The rigorous application and importance of due process is extremely important in any case which involves a liberty interest or where Constitutional safeguards are threatened. The laws which have been implemented to serve as a means of enforcing the equal protection clause of the fourteenth amendment are not abstractions but are clear expressions of policy. These petitioners were not accorded due process or equal protection. This is confirmed by the record and is clearly violative of long standing judicial and public policy. Due process is required where there exists the possibility "grievous loss." One of the plaintiffs here has been deprived of his freedom and his father, the other has been deprived of his child, without so much as a trial, or even a full hearing.

35. Here we are concerned with the liberty interest of a minor as well as his father. There is no difference in the liberty interest of an individual whether he is a child or an adult. In this case neither the child nor the adult received due process and the actions which were violative of same led to an ultra vires substantiation of abuse. It should also be noted, that the reason Mr. Bellesfield lost his job was a result of faxes which DYFS sent to him at work several times, and which contained confidential medical information. Not only is this also a violation of Fourteenth amendment provisions of the right to privacy but is violative of the Americans With Disabilities Act 42 USC 12131 et seq. but the DYFS rule of confidentiality as well.

36. The burden of the State in order to intervene into the sanctity of the familial relationships is a heavy one, as it should be. A vast majority of states continue to recognize

the common law rule of "parental privilege." Twenty nine states have expressly incorporated this privilege by statute, including New Jersey, NJSA 2C:3-8, (1994). When considering what is reasonable in the circumstances courts have traditionally drawn a line somewhere between moderate spankings that leave no long-term or permanent marks and beatings where permanent injuries and scars are incurred. Yet in the instant case no bruises, marks or any other indication of abuse was ever found.

37. A recognition of the importance of limiting of State power over the family is provided in 42 USC Sec. 671(a)(15), which requires that, as a condition for receiving Federal funds to reimburse States for a portion of the cost for foster care, State agencies must make reasonable efforts to re-unite the child with the parent. Yet in the instant case, it would seem that every effort has been directed at doing exactly the opposite and their burden has not been met. NJSA 9:6-8.21c in pertinent part defines an "abused or neglected child" as;

> "A child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired . . . "

38. There can be no question here that the defendants violated these statute [sic], or in the alternative the statutes must be construed as unconstitutionally vague and overbroad. A full fact finding hearing was not even held until July of 1995. During that hearing there was testimony from several of the defendants named herein, virtually all of whom are affiliated in some manner with DYFS and it is submitted that they and the Deputy Attorney General, Peter Alvino, together with the law Guardian appointed for Eric, Joel Harris, also crossed the line

between cooperating and conspiring with respect to the preparation and "tailoring" of testimony in bad faith. Together they planned, coordinated effort to orchestrate such improper testimony, so as to convince the judge that the State should keep custody of Eric without good cause.

39. This testimony was based on "predictions" which have no basis in science, medicine, or psychology without any evidence of actual abuse. During the hearing virtually all of the defendants testified and/or took part in the proceedings as advocates. It is apparent from the record that defendants Alvino and Harris worked in concert to elicit the supposed "evidence," from the array of defendants named herein, all of whom despite no evidence of abuse, suggested their own predictions and perceptions should take precedence over same.

40. These included defendants Fiore and Shea, who improperly used their professional expertise to contribute to the ultra vires substantiation, with reckless disregard for the welfare and consequences to their patients. They followed no accepted or discernable clinical or scientific protocol in their report and evaluation, which was done in conjunction with DYFS worker Dave Johnston. They relied on second hand information, unconfirmed incidents, innuendo and leaps of faith which do not meet acceptable standards of treatment. They willfully engaged blurring the fundamental boundary which should exist between counselor and evaluator, as evidenced in the report of the Governor's Task Force On Child Abuse and Neglect, of which defendant Fiore was member, and which so states that such a boundary should be maintained.

41. As professionals, they had an obligation to act in their patients best interests, not to distort and skew their interpretations of test results and distorting their observations of behaviors. They quite clearly made statements about both petitioners which are not supported by any data or clinical or diagnostic tools and which constitutes not only unacceptable standards of care and treatment mal-practice, but are defamatory as well.

42. They further attempted to use two prior short term hospitalizations of Mr. Bellesfield, which he voluntarily gave them permission to obtain his records, to infer that he was an unfit parent. These were for acute depression, each, of which were just a matter of days in duration, and other than those days, as can be seen in the reports of the three doctors, infra, clearly did not impact on his ability to parent, and the use of these records for the purposes which the State used them in this manner would seem to be a clear violation of the Americans with Disabilities Act and significantly prejudiced Mr. Bellesfield.

43. Three separate experts, Dr. Goodman, Dr. Skinner, Dr. Chalemian wrote reports which not only disagreed with Fiore and Shea, but were severely critical of the manner in which DYFS and their contractors had handled this case. Each of their reports are annexed hereto as exhibits L, M and N respectively and are supported by Fiore's MMPI test results annexed hereto as exhibit O, which indicate that Mr. Bellesfield's personality was in the normal range.

44. The experts statements ranged from indicating that continued pressure on the child was unwarranted, to the fact that they were appalled and that the treatment the

Bellesfields received was reprehensible. Yet each of these experts would not, of their own volition, come to court to testify, not wanting to get involved with DYFS. This serves only to reinforce the perception of this agency as discussed, supra.

45. It is submitted herein, that both of the school systems named herein and DYFS treatment of Eric while in their custody, making derogatory statements about his father and attempts to brainwash Eric amounts to a form of institutional child abuse and meets the burden under NJSA 9:6-8.21. DYFS visited the schools on numerous occasions to "interview" Eric without his father's knowledge or consent. Further they encouraged the school counselors to continue these "looking for abuse" interviews. It was at the urging of DYFS the boy was strip searched and humiliated by a school counselor, which is a totally inappropriate and unacceptable practice. Eric's grades, his emotional, physical and psychological health have markedly deteriorated during the period he was in State custody.

46. The Randolph Schools did not destroy the false records related to Eric and his father as Ordered by the Office of Administrative Law. Mr. Bellesfield saw those records after the date they were supposed to be destroyed, and further discovered that these same records were forwarded to the Morris Knolls School system, who also kept them in defiance of the ALJ Order. They continued the interrogations of Eric at the urging of DYFS.

47. Despite the fact that each and every witness admitted that they had found no signs of abuse, and despite

the warning of manipulation as reflected in the DYFS notes, these defendants, working in concert offered biased, skewed and fraudulent evidence and interpretations which they supplanted for documented incidents of abuse. The evidence was not only cumulative, but distorted and in some cases outright falsifications. This specifically refers to perjured report and testimony of defendant Shea, that Mr. Bellesfield was hospitalized 3 days after Eric's placement. This is an outright lie as the hospital records show. This is grossly unprofessional, willful and malicious or in the alternative grossly incompetent.

48. The Judge's findings of fact, were issued August 22, 1995. In it she seems to have shifted the burden of proof to the petitioner citing a prior New j[sic]ersey case as precedent for doing so, when the cases are as different as night and day. n [sic] her findings she states that based on a preponderance of the evidence that Eric was abused within the meaning of the statute and therefore the burden should shift. It would seem that the judge construed the prior New Jersey case to stand for the proposition of burden shifting as a broad precedent and an exception to the fifth amendment privilege in cases of alleged abuse, when in fact, the decision in that case, which has been upheld on appeal, created only a limited exception, with specific predicates.

49. A Constitutional privilege, however, cannot be easily overcome. The petitioner must first show "injuries to the child which are substantial in nature . . . ," consistent with abuse. This includes broken bones, evidence of serious injury or neglect, or IMMINENT DANGER of same, according to the New Jersey statutes in question. In

this case, according to the DYFS records themselves, THERE WAS NO EVIDENCE OF ABUSE: Not only does it flow from this that therefore there could not have been a prima facie case made, but certainly if there was no abuse reported, it could not be substantiated. There is no established precedent to waive Constitutional rights and privileges upon the mere filing of a petition.

50. Nor does it mean that a parent can be deprived access to their child by the mere act of filing such a petition, which not only fails to establish a prima facie case, but one which is not supported by any EVIDENCE of abuse by admission of the agency itself. There must be SUBSTANTIAL EVIDENCE of injury. In the instant case it is not even disputed that there has never been any evidence of injury, despite Eric's report that his father struck him on January 8, 1994, which he later recanted.

51. No excessive force was used by Mr. Bellesfield, there was no injury, let alone substantial injury; only accusations, second hand statements and innuendo. Mr. Bellesfield did not testify himself during the hearing upon advice of Counsel and barely put on an affirmative defense for two reasons. First his attorney felt, rightfully so, that DYFS had not met its burden, secondly, he could not get those professionals who wrote reports to come and testify, because they were intimidated by DYFS, also rightfully so. Many professionals in this state who have done so, have ended up losing their licenses. Mr. Bellesfield's attorney did not want to Subpoena them, fearing that they would then be hostile. Indeed, the plaintiffs had difficulty finding an attorney who was willing to take on DYFS, as a result of the unbridled power and heavy handed tactics of this agency.

52. Additionally, as stated in the judge's finding, supra, the finding was made at the level of preponderance, and although this level of proof may normally be appropriate according to State law, with respect to State intervention. It is the petitioners contention, supported by the evidence, that this was more than State intervention and in cases which follow the escalation scenario described herein, the preponderance threshold is unconstitutional and should be re-examined. This was a clear effort to prevent access and ultimately to terminate parental rights.

53. The judge had access to the DYFS file which contained the letter regarding efforts at making Eric available for adoption. She knew that Mr. Bellesfield would no longer subject himself or Eric to visitation in a DYFS supervised environment and was aware of the progressive escalation of DYFS custody. At this very hearing the DYFS goal was changed from short term to long term placement. Indeed it would seem that DYFS and the DAG's who represent them seem to wield considerable power and have extraordinary access within the State Court system. This case is replete with many ex parte communications between the judge and DYFS or their agents.

54. The judge seemed particularly disturbed at a note which Mr. Bellesfield attempted to have Eric sign, while they were together in church, which stated that Eric wanted to return home. This fact is not in dispute. It was the act of loving parent, caught in this web of escalation, desperate to have his child back home. Nothing more, nothing less. Perhaps it was not the best of judgments, but it is hardly an appropriate basis for a finding of child

abuse. If the statute permits this kind of judgment and travesty to stand, then the statute is clearly so vague as to be unconstitutional.

55. It is submitted that as a result, the petitioners did not receive a fair hearing, were deprived of due process and that the Court erred both in shifting the burden and in the application of the preponderance standard. Since this Order has been in effect, Mr. Bellesfield has been virtually eradicated from the life of his child. On April 22, 1996, the findings were memorialized in an Order signed by a different judge, who had no prior knowledge of the case. The Order, however, permitted Mr. Bellesfield to submit to defendant Alvino an alternate visitation site. Mr. Bellesfield sent a certified letter to Alvino, suggesting that visits occur at the office of Dr. Richard Gardner, a highly respected expert in the field of child abuse, which was delivered on February 18, and which requested a reply within ten days of receipt, Defendant Alvino did not even bother to respond. This has also occurred on other occasions in the past.

56. On February 6, 1997 the Child Placement Review Board made recommendations to the Judge. They have accepted the new DYFS goal for Eric, which has now become "self sufficiency and preparation for college." After keeping Eric from his father for over two years, clearly they now intend to keep Eric until his emancipation, thus effectively terminating this father's access to his son, during his last years of adolescence.

57. Additionally, Ms. Warren admitted to forging the DYFS Supervisor's signature to that form, to Mr. Bellesfield, when he confronted her with the fact that the

DYFS Supervisor was not even at the meeting. All of this is simply more evidence of the escalation process and termination is termination no matter what it is called and it is clear that termination has effectively already occurred.

58. Just prior to March 1, 1997, as this Complaint was being readied for filing, three important documents were received by Mr. Bellesfield, which transformed all of the allegations in this petition into fact, and shows quite clearly that the scenarios alleged herein were all a build up to an attempt to terminate Mr. Bellesfield. The first is a recent letter he received from Eric, compared with his prior letters. One must question what could cause such a shift in such a short period of time. This is, by itself, ample illustration that Eric is being programed [sic], in that he now echoes and endorses, virtually every statement of DYFS. Such a radical change must be seriously questioned, especially when other behavioral indicators and Eric's badly declining academic performance continue to deteriorate during the same period of time.

59. It is clear from the recent letter, that not only are these written in age inappropriate language, but many are age inappropriate issues and ideas, a child Eric's age would not normally be interested or engaged with. They are clearly the urging of the DYFS personnel and "therapists" using a common technique of brainwashing in urging the child to "get his feelings out in writing to his father.

60. It is no coincidence that almost simultaneously, Mr. Bellesfield received the documents annexed hereto as exhibits V and W. The first is the letter from DYFS dated

February 26, 1997 and his response to same. The second is the Summary Hearing Notice from DYFS and submitted by defendant Warren, indicating the submission of review board findings, and requesting a hearing in Morris County Superior Court, to recommend the initiation of termination proceedings, once again before another judge!

61. This would seem to be a response to Mr. Bellesfield's letter to request visitation and information regarding Eric. The letter he received in return states unequivocally that Eric is not attending church. No other information or visitation was discussed. Obviously this so because they were aware of the Notice in exhibit W was being prepared, to begin the final step of the escalation described herein, namely the termination of parental rights, despite the fact that there is still no evidence of abuse.

62. On this issue the Supreme Court has clearly spoken, recently and unequivocally. In *Santosky v. Kramer*, 455 US 745 (1982) the court clearly stated:

> " . . . freedom of personal choice in matters of family life is a fundamental liberty interest protected by the fourteenth amendment . . . there must be conclusive evidence beyond a reasonable doubt (not merely a preponderance of evidence) to terminate a parent's right of access to their child."

63. Just this past December of 1996, Justice Ruth Bader Ginsberg wrote:

"We place decrees forever terminating parental rights in the category of cases in which the state may not bolt the door to equal justice . . . Parental termination decrees

are among the most severe forms of state action . . . The Mississippi woman seeking to appeal is endeavoring to defend against the state's destruction of her family bonds, and to resist the brand associated with a parental unfitness adjudication (cite omitted)."

It is clear that the defendants here acted in total and willful disregard for same.

64. Clearly such a right deserves due process. Yet this father and son have been forcibly and fraudulently separated, deprived of each other for over three years without so much as a full and fair hearing. That is all this father and son are requesting on a good faith basis, and to which they are entitled. It is for these reasons that the current petition was filed in this Court.

65. In the face of the long term pattern of harassment, the flagrant abuse of power and process and clear evidence of bad faith and fraud, the plaintiffs must be accorded at least a hearing in their choice of a Federal Forum, to vindicate their Constitutional rights, especially when, the State statute is being properly attacked on its face, and no other avenue to enforce those safeguards is available. The State is not prejudiced by such a review, but the alternative if such is not granted, will be the wrongful termination of a parents right to his natural child. The statutes under 42 USC 1983 are designed as exactly such a mechanism, under these circumstances to vindicate those rights. The principle of abstention cannot simply be used to give State Courts the first opportunity to vindicate a Federal claim of such gravity and in the face of such gross violations on the part of the State. It is

the function of the Federal Court to provide such access and oversight.

66. As a direct and proximate result of the actions of these defendants, the petitioners, have been unlawfully deprived of each others affection, they have suffered public humiliation and ridicule and their good names have been impugned and have been subjected to extreme emotional, physical and financial problems which are now overwhelming and have been damaged thereby.

WHEREFORE, the petitioners demand the immediate release of Eric Bellesfield from State Custody to his natural father and compensatory judgments against the defendants jointly and severally in an amount not less than 3,000,000.00 and such punitive damages as the Court deems appropriate, along with costs of this action.

Plaintiffs demand a trial by jury on this cause.

WHEREBY, plaintiffs seek an expedited hearing before this Court, for declaratory and injunctive relief from these acts, the issuance of a temporary injunction to prevent the State from going ahead with the termination proceedings pending such a hearing in this Court on the Constitutionality of same. Considering the bad faith enumerated herein, and the immediate and irreparable damage to the plaintiffs if such a proceeding were permitted to go fourth [sic] and therefore meets the requisite criteria for such intervention on the part of the Federal Court. Petitioners also request the issuance of a permanent injunction to stop the current and prevent future trespasses by the defendants, except as provided for by proper construction of State law and without further

violation of petitioners Constitutional rights and safeguards to which they are entitled. The acts of the defendants are continuing, and petitioners have no other legal remedy to prevent further trespass. This Court must act immediately to put a stop to the illegal intrusion into this family and the severance of the father/son relationship. The acts of the Defendants are so egregious and committed with such willful disregard for law and public policy that such extraordinary relief is justified.

Should the defendants assert a defense of statutory, sovereign or qualified immunity declare that such statues are inapplicable herein due to the level of bad faith shown. State officials cannot use a shield of qualified immunity in this or any other case, unless they are acting in good faith, and not convoluting and circumventing the law and public policy in bad faith. In the event the defendants assert a defense of abstention, collateral estoppel, comity, entire controversy or res judicata, declare same inapplicable herein or in the alternative unconstitutional and violative of petitioners due process, both the procedural and substantive.

WHEREFORE, the undersigned Pro Se Plaintiff, pursuant to Federal Rules of Civil Procedure 65(a), respectfully moves for an expedited hearing before this Court for the granting the injunctive and declaratory relief requested herein; that the State of New Jersey be required to produce the person of Eric Bellesfield, now in State custody before this Court; that in addition to the other relief that the State of New Jersey be required to bear the costs of any counseling or "deprogramming" deemed necessary by experts appointed by the Court and that all records related to this matter from any and all State

agencies be extracted, sealed and expunged; and that the State be required to bear the cost of any educational remedial instruction or tutoring, and grant Plaintiffs attorney fees and costs incurred in this action, pursuant to Federal Rules of Civil Procedure 54(d).

JURY DEMAND

Plaintiffs hereby demand a trial by jury in this cause, as to all such issues herein, which are so triable.

/s/ Michael Bellesfield — 3/25/97
Michael Bellesfield, ex-rel — Date
Eric Bellesfield, Petitioners